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The Kinney & Lange Building
312 South Third Street
Minneapolis, MN 55415-1002

MAILED
FROM DIRECTORS OFFICE

JAN 11 2005

TECHNOLOGY CENTER 3600

In re Application of: :
Thomas Walburgis Bakker, et al. : **DECISION ON PETITION**
Application No. 09/889,726 : **TO WITHDRAW THE**
Filed: October 24, 2001 : **HOLDING OF ABANDONMENT**
For: PIPE HANDLING APPARATUS AND METHOD

This is a decision on applicants' petition to withdraw the holding of abandonment filed September 18, 2003.

The petition is **DENIED**.

On June 11, 1999 applicants filed international application PCT/NL99/00366. On July 18, 2001 applicants filed a Transmittal Letter for entry into the national stage in the United States, under 35 U.S.C. 371. On August 24, 2001 the United States Patent and Trademark Office mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE" (Form PCT/DO/EO/905) which informed applicants that an Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), along with a surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date, was required in order to complete the requirements for acceptance under 35 U.S.C. 371. On October 24, 2001 applicants completed the requirements for acceptance of the present application under 35 U.S.C. 371 by filing the declaration of the inventors, and the surcharge.

Included in the declaration filed October 24, 2001 is the following statement, which was taken as a change of correspondence address:

"Please direct all correspondence in this case to at the address indicated below:

Kinney & Lange, P.A.
Suite 1500
625 Fourth Avenue South
Minneapolis, Minnesota 55415-1659".

On February 3, 2003 a first Office action was mailed to the above-noted "Suite 1500" address, setting a three-month shortened statutory period for response. No reply was received before the expiration of the six-month statutory period for response, and the application became abandoned at midnight on August 3, 2003. A notice of abandonment was mailed, to the "Suite 1500" address, on August 12, 2003.

Applicants have filed the present petition claiming non-receipt of the February 3, 2003 Office action. In support thereof, applicants have included copies of a February 2003 mail log, a March 2003 mail log, an April 2003 docketing report, and a May 2003 docketing report. Applicants further contend that the February 3, 2003 Office action was mailed to the incorrect correspondence address, and that the USPTO should not have changed the correspondence address with the filing of the Declaration submitted October 24, 2001, because "there was no change of address form filed, as required by MPEP § 601.03."

There is a strong presumption that an Office communication **properly addressed and delivered to the United States Postal Services**, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner's evidence of non-receipt is insufficient to withdraw the holding of abandonment. In this regard, MPEP § 601.03 states: "The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made (emphasis added)." The above-noted recitation in the declaration filed by applicants on October 24, 2001 clearly called attention to the fact that an address change was being made, and the USPTO properly changed the correspondence address to the "Suite 1500" address. While it may be that applicants did not receive the above-noted Office action at their current correspondence address, the Office action was, however, properly addressed. Therefore, the non-receipt of the February 3, 2003 Office action was not due to an error on the part of the USPTO, and the holding of abandonment is proper and will not be withdrawn.

Applicants are advised that the present petition is also being taken as a request for Change of Correspondence Address, and the correspondence address for this application has been changed to:

Kinney & Lange
The Kinney & Lange Building
312 South Third Street
Minneapolis, MN 55415-1002

Applicants may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicants have, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

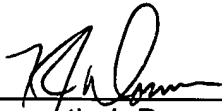
Further correspondence with respect to a petition to revive should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9285.



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KJD/rwg: 01/04/05